

**BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA**

In the Matter of:

JUAN S.<sup>1</sup>,

Claimant,

vs.

WESTSIDE REGIONAL CENTER,

Service Agency.

OAH Case No. L 2005120660

**DECISION**

This matter was heard by Chris Ruiz, Administrative Law Judge (ALJ), of the Office of Administrative Hearings, on September 14, 2006, in Culver City, California.

Martha Thompson, Fair Hearing Coordinator for Westside Regional Center (Service Agency or WRC), represented the Service Agency.

Eulalia E., Claimant's mother (Mom), represented the Claimant. Claimant's stepfather, Daniel P., was also present.

Evidence was received and the matter was argued. The record was closed and the matter was submitted.

**ISSUE**

The parties stipulated that the issue to be decided is:

Shall the Regional Center be allowed to reduce funding for respite services for Claimant from 81 hours per month to 40 hours per month?

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<sup>1</sup> Only the first initial of their last names is used for Claimant and his family members so as to protect their privacy.

## FINDINGS OF FACT

1. Claimant is a 12 year old boy who has been diagnosed with profound mental retardation, cerebral palsy, epilepsy, blindness, and scoliosis. He is prone to infection and requires adult care and supervision at all times. He began receiving supports and services through WRC when he was approximately one year of age.

2. Claimant lives with his Mom, Stepfather, and four siblings. Given Claimant's needs and those of their other children, Claimant's parents awaken at 5:30 a.m. and do not get to bed until 10:00 p.m. at the earliest.

3. On November 8, 2005, WRC issued a notice of proposed action that proposed to reduce funding for respite from 81 hours per month to 40 hours per month as of February 1, 2006. On November 28, 2005, Claimant filed a request for the instant fair hearing. Pending this decision, WRC has been funding 81 hours as "aid-paid-pending."

4. WRC has been funding respite for Claimant since at least 2004. Over time, WRC has increased the number of hours funded on its own and without the family having to request more hours. The increase in funding was due to the needs of Claimant and his family. The WRC then requested that Claimant apply for generic services from Los Angeles County, Department of Public Services. In approximately early 2005, Claimant applied to that agency and was authorized to receive 150 hours, per month, of In Home Supportive Services (IHSS).

5. Respite services provide scheduled non-medical care for a developmentally disabled child in order to allow the other family members a break from the stress of providing care. IHSS services similarly provide a person who can assist in caring for the developmentally disabled child. However, Mom prefers to provide the IHSS services herself because Claimant is more comfortable with her. Claimant's oldest sister, now 18 years of age, provides the respite services.

6. WRC contends that the provision of 150 hours of IHSS reduces the necessity of respite. That is, Claimant's family can use some of the 150 IHSS hours as an opportunity chance to leave the house and relax (i.e. respite). WRC is presently proposing an amount (40 hours per month) that is higher than its Guidelines suggest. This amount was determined by the funding committee which reviewed Claimant's Individual Program Plan (IPP) and conferred with Claimant's service coordinator.

7. Claimant presently receives 81 hours per month in respite services from WRC. If WRC's proposal is allowed, Claimant will now have 40 hours per month in respite services and 150 hours per month in IHSS services from the County of Los Angeles. As proposed that is an increase in available hours of 109 hours. It was established that IHSS does allow Mom, or the other family members, to leave the house for respite purposes. Mom testified that she has been able to leave the house (and Claimant) while using the IHSS hours. While

it is Mom's choice as to how she uses the respite and IHSS hours provided, Mom could obtain another person to provide the IHSS services, such as her daughter who provides the respite services. Even with the WRC's reduction in respite service hours, if Mom hired someone else to perform some, or all, of the IHSS services, she and her family have more overall respite time available than previously when Claimant was not receiving IHSS services.

### LEGAL CONCLUSIONS

1. The Lanterman Developmental Disabilities Act (Lanterman Act) governs this case. (Welf. and Inst. Code §§ 4500, et seq.) A state level fair hearing to determine the rights and obligations of the parties, if any, is referred to as an appeal of the service agency's decision. Claimant properly and timely requested a fair hearing and therefore jurisdiction for this case was established as discussed in Factual Finding 3.

2. The Lanterman Act defines required services and supports as: "specialized services and supports, or special adaptations of generic services and supports, directed toward the alleviation of a developmental disability or toward the social, personal, physical, or economic habilitation or rehabilitation of an individual with a developmental disability, or toward the achievement and maintenance of independent, productive, normal lives." (Welf. and Inst. Code § 4512, subd. (b).)

3. The Lanterman Act was enacted to provide a mechanism by which both the State of California (i.e. the Department of Developmental Services) and private entities (regional centers) would serve the needs of the developmentally disabled. The legislative purpose of the Act is found at Welfare and Institutions Code section 4501: "The State of California accepts a responsibility for persons with developmental disabilities and an obligation to them which it must discharge."

4. The obligations include an array of services ranging from preventive services to treatment and habilitation. Those duties also include the development of, and implementation of, policies and programs dedicated to the proposition that developmentally disabled persons should be given the opportunity to maximize normalization in everyday living, lead independent and productive lives, and avoid placement in unnecessarily restrictive living environments, including institutionalization.

5. Regional centers are subject to certain fiscal constraints and budgetary limits. Consideration must be given to generic resources within the community that are available to meet consumer needs and that reflect the cost-effective use of public resources. (Welf. and Inst. Code § 4640.7, subd. (b), 4646, subd. (a), and 4648, subd. (a)(11).) Where generic services are available, the Service Agency may not fund such service. Sufficient evidence was presented to establish that the 150 hours per month of IHSS services that Claimant receives are sufficient to replace the 41 hours of respite services that the WRC proposes eliminating. (Factual Findings 1-7.)

6. In administrative proceedings, as in civil actions, the party asserting the affirmative generally has the burden of proof, including both the initial burden of going forward with the evidence and the burden of persuasion by a preponderance of the evidence. (*McCoy v. Board of Retirement* (1986) 183 Cal.App.3d 1044, 1051- 1052.) A service agency seeking to change a service previously approved has the burden to demonstrate its proposed decision is correct. California Evidence Code section 500 states that "[e]xcept as otherwise provided by law, a party has the burden of proof as to each fact the existence or nonexistence of which is essential to the claim for relief or defense that he is asserting." As no other statute or law specifically applies to the Lanterman Act, the standard of proof in this case is preponderance of the evidence based on Evidence Code section 115.

7. In this case, the burden of proving such by a preponderance of the evidence is on the WRC. In this case, the WRC carried its burden. (Factual Findings 1-7; Legal Conclusions 1-6.) This conclusion does not preclude Claimant from seeking additional services from WRC in the future.

### ORDER

WHEREFORE, THE FOLLOWING ORDER is hereby made:

The Service Agency shall reduce funding for respite services for Claimant to 40 hours per month as of the date of this decision.

Dated: September \_\_\_, 2006

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CHRIS RUIZ  
Administrative Law Judge  
Office of Administrative Hearings

**NOTE: This is a final administrative decision pursuant to Welfare & Institutions Code section 4712.5(b)(2). Both parties are bound hereby. Either party may appeal this decision to a court of competent jurisdiction within 90 days.**